

2004 FEB 17 AM 3 16

T.R.A. DOCKET ROOM

Law Offices

1500 K Street, N W

Suite 1100

Washington, DC

20005-1209

202-842-8800

202-842-8465 fax

www.drinkerbiddle.com

PHILADELPHIA

NEW YORK

LOS ANGELES

SAN FRANCISCO

PRINCETON

FLORHAM PARK

BERWYN

WILMINGTON

February 12, 2004

Honorable Deborah Taylor Tate
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

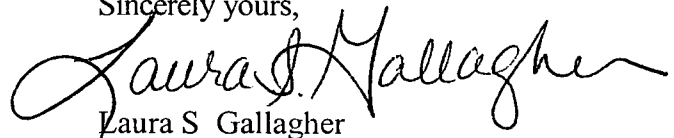
RE Petitions of the Tennessee Coalition of Rural Incumbent Telephone Companies and Cooperatives and CenturyTel of Claiborne, Inc. for Suspension of Wireline-to-Wireless Number Portability Obligations Pursuant to Section 251(f)(21) of the Communications Act of 1934, as Amended, Docket No. 03-00633

Dear Chairman Tate

Enclosed is an original and thirteen copies of Nextel Communications, Inc.'s Opposition, in regards to the above-referenced case. Kindly file same in this docket. Copies are being sent to all parties of record. An additional copy has been included to be returned to us with the stamped date of the filing.

If you have any questions, kindly contact me at the above number. Thank you.

Sincerely yours,


Laura S. Gallagher

LSG:css

Enclosures

cc Paul G. Summers, Attorney General for the State of Tennessee
Vance L. Broemel, Assistant Attorney General
Richard Collier, General Counsel for the Tennessee Regulatory Authority
R. Dale Grimes, Counsel for the Coalition and CenturyTel

RECEIVED

2004 FEB 17 AM 8:16

T.R.A DOCKET ROOM

February 12, 2004

Law Offices

1500 K Street, N.W.

Suite 1100

Washington, DC

20005-1209

202-842-8800

202-842-8465 fax

www.drinkerbiddle.com

VIA FEDEX

Honorable Deborah Taylor Tate
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

PHILADELPHIA

NEW YORK

LOS ANGELES

SAN FRANCISCO

PRINCETON

FLORHAM PARK

BERWYN

WILMINGTON

RE Petitions of the Tennessee Coalition of Rural Incumbent Telephone Companies and Cooperatives and CenturyTel of Claiborne, Inc. for Suspension of Wireline-to-Wireless Number Portability Obligations Pursuant to Section 251(f)(2) of the Communications Act of 1934, as Amended, Docket No. 03-00633

Dear Chairman Tate

Nextel Communications, Inc., ("Nextel") submits this correspondence in response to the Petition filed by the Tennessee Coalition of Rural Incumbent Telephone Companies and Cooperatives ("Coalition" or "Petitioners") on behalf of its members with the Tennessee Regulatory Authority ("TRA") for suspension of the Federal Communications Commission's ("FCC") requirement to implement wireline-to-wireless local number portability ("LNP") upon receiving a request from a commercial mobile radio service ("CMRS") provider.¹ The Petition fails utterly to demonstrate the need for any extension of the intermodal LNP requirement by the TRA. For the reasons provided in this letter, and in light of the FCC's recent clarification of the ILECs' porting obligations set forth in its *Intermodal Porting Order*, the Petitioners' requests for relief

¹ See Petition of the Tennessee Coalition of Rural Incumbent Telephone Companies and Cooperatives for Suspension of Wireline to Wireless Number Portability Obligations Pursuant to Section 251(f)(2) of the Communications Act of 1934, as Amended, Docket No. 03-00633 (filed December 11, 2003) ("Coalition Petition"). The Coalition Petition requests that the TRA suspend enforcement of the LNP requirements pending review of the petition and further suspend the Petitioners' obligations to provide LNP in their service areas without any specific deadline by which Petitioners must provide LNP, other than no earlier than May 24, 2004. Coalition Petition at 4, 7. Nextel recognizes that CenturyTel of Claiborne, Inc. ("CenturyTel") filed a similar Petition for Suspension of the Federal Communications Commission Requirement to Implement Number Portability, Docket No. 03-00633 (filed November 20, 2003). The CenturyTel Petition requests that the TRA grant CenturyTel a temporary suspension until May 24, 2004. On January 20, 2004, CenturyTel filed a notice of withdrawal of its petition for suspension of the LNP requirements. As of today, however, the TRA has not acted on the CenturyTel request to withdraw. Out of an abundance of caution, therefore, Nextel opposes a suspension of CenturyTel's intermodal porting obligation past May 24, 2004.

Honorable Deborah Taylor Tate

February 12, 2004

Page 2

from honoring their statutory local number portability obligations are wholly unsubstantiated, and their arguments in favor of a suspension are makeweight

Nextel requests that the TRA affirm that Petitioners have an obligation to port numbers to wireless carriers (upon receipt of the appropriate port validation information). The Petitioners are hiding behind unsubstantiated claims of “uncertainty” or “technical infeasibility” to further delay necessary wireline network upgrades and must proceed with overall LNP implementation. For the reasons set forth below, the TRA should reject the Petition.

I. INTRODUCTION.

Nextel is one of several Commercial Mobile Radio Service (“CMRS”) providers that, through subsidiaries, markets its services in Tennessee as part of a nationwide service offering. Under the terms of FCC orders and rules, Nextel and other CMRS carriers have been required to allow customers to port their numbers out and to accept new customers with numbers to be ported in since November 24, 2003. Nextel has been preparing its network, systems and personnel to honor the FCC’s porting rules literally for years. Notably, the FCC makes no distinction in its rules between the porting of numbers among wireless carriers and the porting of numbers between a wireless carrier and a rural ILEC. Therefore, Nextel has proceeded to implement LNP with both wireless and wireline carriers through the FCC’s specified *bona fide* request process. In fact, at the time it adopted LNP obligations for wireless carriers, the FCC cited the potential for intermodal competition as the driving public interest reason for requiring CMRS carriers to implement LNP.² And the FCC recently has reaffirmed this goal in its *Intermodal Porting Order*.³

The Petitioners’ request for suspension of their obligation to provide LNP is deficient and must be denied. These rural ILEC Petitioners have attempted to invent a

² See Telephone Number Portability, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, ¶ 160 (1996) (“*Number Portability Order*”) (noting that “service provider portability will encourage CMRS-wireline competition, creating incentives for carriers to reduce prices for telecommunications services and to invest in innovative technologies, and enhancing flexibility for users of telecommunications services.”)

³ See Telephone Number Portability – CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-116, FCC 03-284 (rel. November 10, 2003) *appeal pending sub nom. United States Telecom Association, et al. v. Federal Communications Commission*, Case Nos. 00-1012, 00-1015, 03-1310, 03-1424 *et al.* (D.C. Cir.) (“*Intermodal Porting Order*”).

Honorable Deborah Taylor Tate

February 12, 2004

Page 3

controversy over the supposed “uncertainty, confusion and the need for clarification”⁴ surrounding number portability and claims that LNP is “technically infeasible”⁵ In addition, Petitioners raise concerns over the amount of investment required to implement intermodal porting, claiming that incurring these costs is “difficult to justify when weighed against the few, if any, public benefits that may be gained”⁶ *These are not credible claims and the ILEC Petitioners are in no position to second guess the FCC’s cost-benefit analysis of portability Moreover, all local exchange carriers, rural or otherwise, have been on notice since 1996 that full intermodal number portability would be required*⁷ Thus, the rural ILEC petitioners cannot now claim lack of understanding or failure to anticipate the full implication of the LNP requirements

The Petitioners claim to need guidance from both the FCC and the TRA and question the legality of the *Intermodal Porting Order* in an obvious effort to delay LNP implementation Further, by confusing the issues and questioning the framework and terms under which they state they can provide LNP capability to wireless carriers, they are attempting to make intermodal porting more difficult and far more expensive for CMRS carriers to accomplish, to the detriment of the citizens residing in rural areas of Tennessee Regardless of the Petitioners’ agenda, this cannot be the TRA’s agenda, as it is fundamentally at odds with federal law, FCC policy and the interests of rural consumers who, like consumers in larger urban areas, *have the legal right under the Communications Act to port their numbers to new carriers should they so desire* Tactics to further delay intermodal LNP will disserve consumers in each of the Petitioners’ own markets, and the Coalition Petition must be denied

As an initial matter, the subject matter of the Coalition Petition is within the exclusive province of the FCC *and already has been addressed fully by the FCC* Indeed, on November 10, 2003, the FCC issued an order clarifying the scope of ILEC intermodal porting obligations and an order affirming its decision a mere ten days later.⁸ Because

⁴ Coalition Petition at 6

⁵ *Id* at 2

⁶ *Id* at 7

⁷ The wireless LNP implementation timetable was finalized in July of 2002 when the FCC established that CMRS carriers would offer number portability in the top 100 MSAs by November 24, 2003 See Verizon Wireless’s Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation And Telephone Number Portability, *Memorandum Opinion and Order*, 17 FCC Rcd 14972 (2002)

⁸ See *supra* note 3 (citing the *Intermodal Porting Order*) On November 20, 2003, the FCC rejected a request for stay of the *Intermodal Porting Order* pending judicial review Telephone

Honorable Deborah Taylor Tate

February 12, 2004

Page 4

the FCC has clarified *for all ILECs*, including rural carriers, the scope and timing of their intermodal porting obligations, it would be an unlawful and highly inefficient use of the TRA's time and resources to entertain the Coalition Petition. ***Moreover, the FCC's order requires rural ILECs to file any requests for waiver or extension of the wireline-to-wireless LNP requirement with the FCC, not with individual state commissions.***⁹ On this basis alone the Petition should be dismissed

Second, standing on its own, the Coalition Petition contains factual inaccuracies or mischaracterizations. For example, the Petitioners suggest that, in the absence of an interconnection agreement, "calls to the ported number" cannot be rated "in the same fashion as they were prior to the port" because the routing will be to the originating wireline customer's chosen toll or interexchange carrier, and it is this carrier which will rate the calls.¹⁰ This is simply not the case and plainly makes no sense. As the FCC

Number Portability, United States Telecom Association and CenturyTel of Colorado, Inc. Joint Petition for Stay Pending Judicial Review, *Order*, CC Docket No. 95-116, FCC 03-298 (rel. Nov. 20, 2003). The D.C. Circuit also declined to grant a motion for stay filed by these same parties. And, the Independent Telephone and Telecommunications Alliance ("ITTA"), the National Telecommunications Cooperative Association ("NTCA"), and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") filed at the FCC an "Emergency Joint Petition for Partial Stay," requesting a partial stay of the November 10, *Intermodal Portability Order*. See Emergency Joint Petition for Partial Stay and Clarification, CC Docket No. 95-116 (filed November 21, 2003). These petitioners also filed a Petition for Review at the D.C. Circuit of the *Intermodal Porting Order*. Specifically, the joint petitioners requested the stay on behalf of the individual association members which serve *less than two percent* of the Nation's subscriber lines – a class of rural ILECs that presumably include each of the Petitioners. On January 16, 2004, the FCC granted a limited waiver of the wireline-to-wireless porting requirement for Two Percent Carriers that operate in the top 100 MSAs. Thus, those Two Percent Carriers operating within the top 100 MSAs that had not received a request for local number porting from either a wireline carrier prior to May 24, 2003, or from a wireless carrier that has a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned, will have until May 24, 2004 to comply with the FCC's intermodal porting requirements. To the extent that a Two Percent Carrier operating within the top 100 MSAs does *not* meet these qualifications, it must comply with the preexisting requirements for wireline-to-wireless porting. Telephone Number Portability, *Order*, CC Docket No. 95-116, FCC 04-12 (rel. January 16, 2004) ("*Two Percent Carrier Portability Order*")

⁹ *Intermodal Porting Order* at ¶ 30 ("Carriers inside the 100 largest MSAs (or outside the 100 largest MSAs, after the transition period) may file petitions for waiver [at the FCC] of their obligation to port numbers to wireless carriers, if they can provide substantial, credible evidence that there are special circumstances that warrant departure from existing rules.")

¹⁰ Coalition Petition at 12-13

Honorable Deborah Taylor Tate

February 12, 2004

Page 5

recently clarified, “wireless carriers need not enter into section 251 interconnection agreements with wireline carriers solely for the purpose of porting numbers”¹¹ And, the porting of a number from a wireline to a wireless carrier does not involve “location” portability or change in the call *pattern because the rating of calls to the ported number stays the same*¹² No rating changes occur and no interconnection agreements need to be negotiated for intermodal porting to work

Finally, the Coalition Petition fails to meet the baseline requirements for the requested suspension of LNP obligations To satisfy the requirements for a waiver under Section 251(f) of the Act, each rural ILEC actually must demonstrate that it satisfies the specific criteria of Section 251(f), including a demonstration of technical infeasibility, prior to obtaining an exemption The Petition is devoid of any real technical infeasibility claims Rather, the rural ILECs simply allege general “technical limitations” and issues relating to call routing and rating to support their Petition¹³ Such blanket assertions absent sufficient underlying support are insufficient to warrant the requested suspension

II. THE COALITION PETITION SHOULD BE DISMISSED.

It is plain from review of the Coalition Petition that the subject matter is within the exclusive purview of the FCC, and the issues the Petition raises for resolution to the TRA already have been resolved The FCC has asserted jurisdiction over all issues related to CMRS number portability by citing its authority under Sections 1, 2, 4(i), and 332 of the Communications Act¹⁴ Significantly, the FCC *did not* rely upon Section 251(b) as its source of jurisdiction The Coalition Petition squarely raises questions regarding the scope of the rural ILECs’ intermodal portability obligations with wireless carriers and questions of technical feasibility Such questions implicate bedrock federal intermodal LNP rules and policies – all of which have been decided¹⁵ And, as stated

¹¹ *Intermodal Porting Order* at ¶ 34

¹² *Id.* at ¶ 27 (emphasis added)

¹³ Coalition Petition at 11-13 The CenturyTel Petition merely provides a generic list of the steps it will have to take to implement LNP, with no estimates of costs, stating that “[t]o become LNP capable will require a significant investment” CenturyTel Petition at 6

¹⁴ *See Number Portability Order*, 11 FCC Rcd at ¶ 155

¹⁵ The FCC confirmed that the intermodal porting obligation in general is based on the FCC’s authority under Sections 1, 2, 4(i) and 332 of the Act The specific wireline porting obligation derives from Section 251(b), while the wireless porting obligation derives from Sections 1, 2, 4(i) and 332 *Intermodal Portability Order* at ¶ 8 And, on January 16, 2004, the FCC granted a limited waiver of the wireline-to-wireless porting requirement for Two Percent Carriers that

Honorable Deborah Taylor Tate
February 12, 2004
Page 6

above, the FCC has required that ILECs file any requests for waiver of the wireline-to-wireless LNP requirement with the FCC, and not the state commissions. As such, the TRA should dismiss the Petition on the basis that the issues presented therein are exclusively a matter of federal interpretation and review.

Alternatively, the TRA, as a matter of comity¹⁶ and administrative efficiency, should accede to the FCC's resolution of issues relating to wireline-to-wireless LNP. The FCC has already clarified the pending issues surrounding the wireline-to-wireless porting obligation, and has asked for further comment on certain remaining issues related to wireless-to-wireline porting.¹⁷ It would be an unlawful and inefficient use of both the TRA's and carriers' time and resources to proceed in the Tennessee forum on the Coalition Petition. The FCC has already clarified that carriers operating within the top 100 MSAs (other than the Two Percent Carriers that had not received *bona fide* LNP requests) must implement intermodal number portability on November 24, 2003 and, as such, Nextel submits that the Petitions should be dismissed in their entirety.¹⁸

operate in the top 100 MSAs (so long as they had not received a request for local number porting from either a wireline carrier prior to May 24, 2003, or from a wireless carrier that has a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned) until May 24, 2004. See generally *Two Percent Carrier Portability Order*

¹⁶See, e.g., *Lyons v. Stovall*, 188 F.3d 327 (6th Cir. 1999) (The doctrine of comity "teaches that one court should defer action on causes properly within its jurisdiction until the courts of another sovereignty with concurrent powers, and already cognizant of the litigation, have had an opportunity to pass upon the matter") (citations omitted), *Hooker v. Burson, et al.*, 960 F. Supp. 1283 (W.D. Tenn. 1996) ("One of the principles underlying the doctrine of comity is the desire to avoid conflicting decisions whenever possible.")

¹⁷ See *Intermodal Porting Order* (Further Notice of Proposed Rulemaking)

¹⁸ This conclusion was reached by the North Carolina Utilities Commission prior to the FCC's release of the *Intermodal Porting Order* on a similar petition by the Alliance of North Carolina. The Alliance filed a petition on behalf of its rural ILEC member companies requesting modification of the LNP requirement. The North Carolina Utilities Commission dismissed the petition stating "the [North Carolina] Commission does not believe that it would be an efficient exercise of the Commission's resources or those of the parties to attempt to rule on this aspect of the Alliance's Petition when there is the likely prospect of receiving clarification from the FCC in the near future." See Petition by the Alliance of North Carolina Independent Telephone Companies for Limited Modification of the Requirement to Provide Number Portability, Docket No. P-100, SUB 133r, *Order Dismissing Petition Without Prejudice*, at 3 (issued Oct. 7, 2003) ("Alliance Order"). No different conclusion should be reached here.

Honorable Deborah Taylor Tate
February 12, 2004
Page 7

III. THE COALITION PETITION CONTAINS FACTUAL INACCURACIES.

Casting further doubt on the credibility of the of the Coalition Petition are the inaccurate statements or mischaracterizations contained therein. For example, the Petitioners claim, among other things, that they were provided only “two week[s] notice” of their intermodal porting obligation. In addition, the Coalition contends that calls ported to a wireless carrier that has not established interconnection arrangement with an Independent, cannot be rated “in the same fashion as they were prior to the port.”¹⁹ Further, the Petitioners assert that the routing of the calls will change because such calls will have to be routed to the originating wireline customer’s chosen toll or interexchange carrier in those instances where a wireless carrier has failed to establish an interconnection agreement with the wireline carrier.²⁰ And, according to the Petitioners, they simply “do not provision local exchange services that involve transport responsibility or network functions beyond their own networks within their respective services areas.”²¹

These assertions are misstatements of law and fact that represent an attempt to recast the FCC’s quite straight forward intermodal porting rules. First and foremost, the rural ILECs have been on notice of their intermodal porting obligations since 1996, and any suggestion otherwise is wholly disingenuous.²² Second, the FCC has already found that the existence of an interconnection agreement is not necessary, *and cannot be required*, for ILECs to comport with their intermodal number portability obligations.

We agree . . . that wireline carriers should be required to port numbers to wireless carriers without necessarily entering into an interconnection agreement because this obligation can be discharged with a minimal exchange of information. We thus find that wireline carriers may not unilaterally require interconnection agreements prior to intermodal porting.²³

Further, the FCC has clarified that the porting of a telephone number from a wireline carrier to a wireless carrier does not, in and of itself, require that any rerating of

¹⁹ Coalition Petition at 12

²⁰ *Id.* at 12-13

²¹ *Id.* at 13

²² *See supra* note 7

²³ *Intermodal Porting Order* at ¶ 34

Honorable Deborah Taylor Tate
February 12, 2004
Page 8

the call change. Indeed, as the FCC explained in the *Intermodal Porting Order*, “a wireless carrier porting-in a wireline number is required to maintain the number’s original rate center designation following the port. As a result, calls to the ported *number will continue to be rated in the same fashion as they were prior to the port*. As to the routing of calls to ported numbers, it should be no different than if the wireless carrier had assigned the customer a new number rated to that rate center.”²⁴

Finally, it is simply untrue that the rural ILECs do not provision local exchange services that involve transport responsibility or network functions beyond their own networks. Indeed, as the Michigan PSC recently recognized, the “FCC’s November 10 order appears to rebut . . . [the] representation that numbers cannot be ported even beyond the boundaries of the original rate center. *Historically, even prior to the advent of wireline-to-wireless LNP, wireless calls have routinely been routed outside of local exchanges*.”²⁵

Through these misstatements, the Coalition is merely trying to delay their intermodal porting obligations – which they have known about for years. Such inaccurate statements of the law and fact should not be given any credence, and the Coalition Petition should be dismissed.

IV. THERE IS NO BASIS TO GRANT A BLANKET SUSPENSION OF THE LNP REQUIREMENTS

Assuming for the moment that Section 251(f) is implicated at all, the Petitioners utterly fail to satisfy the relevant Section 251(f)(2) criteria to allow the TRA to grant any suspension of their general LNP obligations. Pursuant to Section 251(f)(2), an ILEC with fewer than two percent of the nation’s subscriber lines installed in the aggregate nationwide may request from a state commission a suspension or exemption of the application of the Section 251(b) and (c) requirements.²⁶ To justify such an exemption, the LEC must proffer, among other things, *evidence* that the application of Section 251(b)

²⁴ *Id.* at ¶ 27 (emphasis added)

²⁵ See Petition of CenturyTel of Michigan, Inc., and CenturyTel Midwest-Michigan, Inc., for Temporary Suspension of Wireline-to-Wireless Number Portability Obligations Pursuant to § 251(f)(2) of the Federal Telecommunications Act of 1996, as amended, *Opinion and Order*, Case No. 13729 (December 9, 2003). The Michigan PSC denied a request by CenturyTel to temporarily suspend the wireline-to-wireless local number portability (LNP) obligations to wireless providers in five Michigan exchanges until May 24, 2004.

²⁶ 47 U.S.C. § 251(f)(2)

Honorable Deborah Taylor Tate
February 12, 2004
Page 9

or Section 251(c) of the Act would likely cause undue economic burden beyond that which is typically associated with efficient competitive entry²⁷ More than mere conjecture of a perceived harm is necessary to warrant any consideration of an exemption from LNP requirements The Coalition Petition fails completely to address, let alone satisfy, the basic Section 251(f)(2) criteria

As a procedural matter, in light of the FCC's recent decision on the Emergency Joint Petition for Partial Stay filed at the FCC by rural ILEC trade associations, any consideration of the Petitioners' request for an extension by the TRA would be a waste of TRA resources and could result in a finding that is contrary to the FCC's determination on the Joint Petition²⁸ Indeed, and as stated above, the FCC granted a *limited* waiver of its wireline-to-wireless porting requirement for ILECs with fewer than two percent of the nation's subscriber lines that operate in the top 100 MSAs Critically, the FCC only granted a waiver for those Two Percent Carriers operating within the top 100 MSAs *that had not received a request for local number porting from either a wireline carrier prior to May 24, 2003, or from a wireless carrier that has a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned* To the extent that a Two Percent Carrier operating within the top 100 MSAs does not meet these qualifications, it must comply with the requirements for wireline-to-wireless porting to date As such, any determination to extend the Petitioners' intermodal porting obligation past May 2004, or that is any way different from the FCC's limited waiver, would presumably contradict the FCC's determination

Furthermore, the FCC has already weighed the cost and benefits of intermodal porting and has implemented its own "safety valve" process for waivers The Coalition Petition, therefore, is nothing more than a duplicative attempt for additional relief that should not be entertained And, it is wholly inappropriate for the TRA to consider a multiple-carrier request for Section 251(f)(2) relief Both the absence of any evidence and the general and vague assertions about the costs of wireline to wireless LNP are plainly insufficient to warrant a blanket multi-carrier suspension²⁹

²⁷ 47 C F R § 51.405(d)

²⁸ See *supra* note 8 (discussing the ITTA/NTCA/OPASTCO Emergency Joint Petition for Partial Stay and Clarification)

²⁹ Indeed, as another state commission recently observed on a similar group-filed rural ILEC LNP suspension/exemption application

[I]t would appear necessary for *each individual company* in the Alliance which wishes to benefit from this exemption to provide data showing that in fact the exemption is necessary for it to avoid significant adverse economic impact on users generally, to avoid

Honorable Deborah Taylor Tate
February 12, 2004
Page 10

Not surprisingly, the Petitions lack any claim or data to show that LNP implementation is technically infeasible. Indeed, the Petitioners fail to identify even a single technical hurdle – *other than time and money required to undertake the network modifications*– associated with LNP implementation³⁰ Nor can they. The mischaracterizations regarding rating and routing of numbers mentioned above simply do not suffice as evidence of technical hurdles. Moreover, it is obvious even from the Coalition Petition that implementation is feasible, since the rural ILECs simply ask for a “*temporary* suspension”³¹ Although the Petition appears to lack any requested “end point” for the requested suspension, the Petitioners nevertheless characterize the suspension as temporary. Thus, any future contentions that the Petitioners cannot technically implement LNP upon receiving a *bona fide* request would be disingenuous, since all the Petitioners claim to need is more time and money to implement intermodal LNP.

Finally, the Petitions do not support a claim for undue economic harm. According to the Petitions, the LNP obligations are unduly economically burdensome because the costs of implementing them “are significant”³² More illuminating to the rural ILECs position, however, is Petitioners’ claim that “[t]he decision to incur these costs becomes even more difficult to justify when weighed against the few, if any, public benefits that may be gained by attempting to implement the capability to port numbers to

imposing a requirement that is unduly economically burdensome, or to avoid imposing a requirement that is technically infeasible. Unfortunately, the Alliance’s Petition contained no such individual data, instead the Alliance appears to argue that *any* imposition of what it believed to be a wrongful obligation *ipso facto* meets those tests. The Commission believes that Section 251(f)(2) requires more than this.

Alliance Order at 3 (emphasis in original)

³⁰ Coalition Petition at 8 (discussing the “economic burden of deployment”)

³¹ *Id.* at 7 (“Grant of a *temporary* suspension would avoid imposing a requirement that is unduly economically burdensome”) (emphasis added). The Petition states that “no Independent should be subjected to a requirement to support intermodal number portability prior to May 24, 2004, the date established by the FCC.” However, the Petition goes on to request an open-ended suspension until such time as the TRA “resolves the issues raised in this proceeding.”

³² *Id.* Even in the case of CenturyTel, its individual Petition only provides a generic list of the steps it will have to take to implement LNP, with no estimates of costs, simply stating that “[t]o become LNP capable will require a significant investment.” CenturyTel Petition at 6.

Honorable Deborah Taylor Tate

February 12, 2004

Page 11

the wireless provider ”³³ *Fundamentally, the ILECs are in no position to second guess the FCC’s cost-benefit analysis of intermodal portability. Nor do the rural ILECs provide any evidence that the application of the LNP requirement would be likely to cause undue economic burden beyond that which is typically associated with efficient competitive entry*

What is plain from the Petition is that the Coalition members are not incapable of implementing wireline-to-wireless LNP, *they simply do not want to do it* because it may cost money. Absent more, the Coalition Petition is deficient, and it cannot be granted.

V. CONCLUSION.

For the foregoing reasons, Nextel requests that the TRA dismiss the Coalition Petition. To the extent Petitioners have a case to make on these issues, it should be made to the FCC, rather than to the TRA. LNP is meant to be a pro-competitive, publicly beneficial tool. Rural ILECs should not be permitted to use their alleged confusion or purported concerns about intermodal LNP implementation as an excuse to further delay basic compliance, as the FCC has determined already.

Respectfully submitted,



Laura H. Phillips

District of Columbia Bar No. 405176

Counsel for Nextel Communications, Inc.

LHP lsg

cc Paul G. Summers, Attorney General for the State of Tennessee
Vance L. Broemel, Assistant Attorney General
Richard Collier, General Counsel for the Tennessee Regulatory Authority
R. Dale Grimes, Counsel for the Coalition and CenturyTel

³³ *Id*